

# **Exhibit N**

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**Blair, Stephanie**

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**From:** Kumar, Ambika <AmbikaKumar@dwt.com>  
**Sent:** Wednesday, March 17, 2021 10:56 AM  
**To:** Lorbiecki, Mark; Brown, Daniel; thb@gameattorney.com  
**Cc:** Li, Xiang; Blair, Stephanie; Guthrie, Heather; Smith, Lesley; Lindquist, Gabrielle  
**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

**Categories:** DM, #34102 : 0101

Mark, Mr. Jarrard reports that he was wrong about his availability. He cannot do April 16, but he can do April 22 or 23. Again, please let us know which of these dates you'd like for each witness and when you're free to discuss the remaining issues, including the case schedule.

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**From:** Kumar, Ambika  
**Sent:** Tuesday, March 16, 2021 12:02 PM  
**To:** 'Lorbiecki, Mark' <MLorbiecki@williamskastner.com>; 'Brown, Daniel' <dbrown@williamskastner.com>; 'thb@gameattorney.com' <thb@gameattorney.com>  
**Cc:** Li, Xiang <XiangLi@dwt.com>; 'Blair, Stephanie' <SBlair@williamskastner.com>; 'Guthrie, Heather' <HGuthrie@williamskastner.com>; Smith, Lesley <LesleySmith@dwt.com>; 'Lindquist, Gabrielle' <GLindquist@williamskastner.com>  
**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Mark, Mr. Yarger is flexible in terms of scheduling in late April. Perhaps once we nail down the other dates, we can pick one for him.

I believe you have all the dates you requested, and we've satisfied your pre-conditions to having a conversation. Please let me know whether and when we can have a call—to discuss the case schedule and the motion to compel.

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**From:** Kumar, Ambika  
**Sent:** Tuesday, March 16, 2021 9:51 AM  
**To:** 'Lorbiecki, Mark' <MLorbiecki@williamskastner.com>; 'Brown, Daniel' <dbrown@williamskastner.com>; 'thb@gameattorney.com' <thb@gameattorney.com>  
**Cc:** Li, Xiang <XiangLi@dwt.com>; 'Blair, Stephanie' <SBlair@williamskastner.com>; 'Guthrie, Heather' <HGuthrie@williamskastner.com>; Smith, Lesley <LesleySmith@dwt.com>; 'Lindquist, Gabrielle' <GLindquist@williamskastner.com>  
**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Hi Mark, Mr. Jarrard can be available for deposition April 16. If that date does not work for you, please let me know and we will get some more dates. In addition, please let me know, per my email on Friday, whether you intend to take Mr. Jarrard's deposition, given that we think you maybe meant to take the deposition of Mr. Yarger, who is the music supervisor. We will get you dates for Mr. Yarger soon. In the meantime, if you could confirm that the April 16 (Jarrard) and April 30 dates (Ross) work, that would be great, as well as what dates the last week of April would be good for Mr. O'Connor.

As a reminder, please send dates for Mr. O'Donnell, Mr. Salvatori, and ODS.

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**From:** Kumar, Ambika

**Sent:** Monday, March 15, 2021 11:44 AM

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**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Hi Mark: Ms. Ross can be available for a deposition on April 30. Can you let us know whether that works and how long you think it will take? She has no unique knowledge of the underlying facts, so we are not sure why you are seeking to depose her, but we will make her available.

If April 30 does not work, please let me know, and we will try to get some more dates. As you know, Ms. Ross is a corporate vice president, so her schedule will be the hardest to work around.

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**From:** Kumar, Ambika

**Sent:** Friday, March 12, 2021 4:14 PM

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**Cc:** Li, Xiang <[XiangLi@dwt.com](mailto:XiangLi@dwt.com)>; Blair, Stephanie <[SBlair@williamskastner.com](mailto:SBlair@williamskastner.com)>; Guthrie, Heather <[HGuthrie@williamskastner.com](mailto:HGuthrie@williamskastner.com)>; Smith, Lesley <[LesleySmith@dwt.com](mailto:LesleySmith@dwt.com)>; Lindquist, Gabrielle <[GLindquist@williamskastner.com](mailto:GLindquist@williamskastner.com)>

**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Mark,

I did not say or mean to imply that you had not given us dates before. My apologies if you interpreted it differently.

On the deposition dates, we noticed in your motion to compel that you indicated Brian Jarrard is the music director of the 343 subsidiary handling the Halo properties. But Mr. Jarrard is not the music director, but the community manager. And the page you point to in your motion to compel discusses Mr. Yarger, not Mr. Jarrard. We think you may

have meant to ask for the deposition of Mr. Yarger, who is the music supervisor. Can you please confirm whether you want the depositions of both these individuals, or just Mr. Yarger?

Also, we are not "Just now" identifying Mr. Yarger as a custodian. We did so in our ESI disclosures in December.

Please let us know which of the two you want dates for (or both), and we'll work to get them. The paralegal assigned to this case at Microsoft was out today, so we do not yet have dates for Mr. Jarrard or Ms. Ross. But we will have them soon.

Regards,  
Ambika

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**Sent:** Friday, March 12, 2021 11:10 AM  
**To:** Kumar, Ambika <[AmbikaKumar@dwt.com](mailto:AmbikaKumar@dwt.com)>; Brown, Daniel <[dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)>;  
[thb@gameattorney.com](mailto:thb@gameattorney.com)  
**Cc:** Li, Xiang <[XiangLi@dwt.com](mailto:XiangLi@dwt.com)>; Blair, Stephanie <[SBlair@williamskastner.com](mailto:SBlair@williamskastner.com)>; Guthrie, Heather  
<[HGuthrie@williamskastner.com](mailto:HGuthrie@williamskastner.com)>; Smith, Lesley <[LesleySmith@dwt.com](mailto:LesleySmith@dwt.com)>; Lindquist, Gabrielle  
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**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Naturally, as I explained, I need all three dates for deposition before discuss the remainder of the issues you have set out here. You have given me availability for Mr. O'Connor but you have not given me the other two. I expect you can get those to me soon so we can discuss these other issues. Because you are just now identifying Mr. Jarger as a custodian below, I will need availability dates for Mr. Jarger as well. Once we have those dates, we can move forward on the other issues.

Now you are demanding availability dates for Michael Salvatori and Marty O'Donnell. As you can see by the attached, we did earlier give you availability dates and you elected not to book any of those dates. I will contact my client and get you new dates but I very much resent the suggestion in your email that we did not provide you with dates earlier. We got the dates for you when you requested them which certainly contrasts with your own treatment of our requests.

We can discuss things once we have dates. That should not be hard. We have been asking since February 10.

Thank you,

**Mark Lawrence Lorbiecki**

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**WASHINGTON OREGON**

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**Sent:** Wednesday, March 10, 2021 6:33 PM

**To:** Lorbiecki, Mark <[MLorbiecki@williamskastner.com](mailto:MLorbiecki@williamskastner.com)>; Brown, Daniel <[dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)>; [thb@gameattorney.com](mailto:thb@gameattorney.com)

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**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Mark,

Thanks for your prompt response.

As an initial matter, I'm sorry to hear that you feel any sense of disrespect. That is a surprise, given your comments to Judge Peterson at the last year. That said, I'm hopeful we can get back on the right track. I have deposition dates for Mr. O'Connor and should have deposition dates for Mr. Jarrard/Ms. Ross within the next couple of days.

I am also outlining Microsoft's positions on several other issues and renewing our request to talk by phone.

***Deposition scheduling.***

Please provide dates on which Mr. O'Donnell, Mr. Salvatori, and ODS can be available for depositions.

We will get you dates for Mr. Jarrard and Ms. Ross, hopefully by end of week, if not early next week, and we anticipate those dates being in late March or in April (but not the week of April 5). If there are dates in that range that are better for you, please let us know and we'll do our best to accommodate them.

Mr. O'Connor is available any day the last week of April.

***Proposal for Responding to Discovery Requests Using the Term "Derivative Works" or "Derivative Use"***

As I mentioned in my February 12 letter, we have conferred further with our client and have another proposal. In lieu of the thanked/credited list Microsoft previously proposed, Microsoft would have a team led by Joel Yarger, the Music Supervisor at 343 Industries, review (a) the soundtracks for the Halo games (i.e., Halo 4, Halo 5 Guardians, Halo 1 and 2 Anniversary, and Halo Infinite); and (b) music created by or for Microsoft for any other Halo games, film, and TV (including Halo Wars, Halo Legends, Halo Spartan Assault, Halo Spartan Strike, Fall of Reach, Neil Blomkamp Halo Films, and Nightfall), to create a list of potential derivative works of music ODS delivered to Microsoft under the ICA. Using that list, Microsoft then would supplement its responses and production to RFPs 7 and 10 and Interrogatory 4 accordingly. Given the amount of resources Microsoft would need to invest to accomplish this task, we would appreciate ODS's input on and agreement to this proposal before undertaking the project.

***Further Response to Issues Raised with Microsoft's Discovery Responses***

**Microsoft's Response to RFP 5.** This request asks Microsoft to produce "agreements with any of L. Heureaux Martin; Gilbert Thevenet; Florian Seriot; Joshua Camp; Michael Hearst; Martin Cooper; Patrick Azzara; [Merlin] Redeye Distribution; Shock Entertainment Pty; Sumthing Else Music Works; and Sumthing Distribution relating to any Halo soundtrack or any part of any Halo soundtrack." We have conducted a reasonable search and produced the only responsive documents we located, MSFT\_00001609-1675. However, as you'll see below, we propose including these entities as search terms for searches of the ESI custodians we have identified.

**Microsoft's Response to RFP 6.** This request asks Microsoft to produce "any documents indicating Microsoft's own use of any part of any Halo soundtrack, such use being outside of the actual play of any Halo game, for example for promotion of any Halo games or other Microsoft products." Microsoft agreed to provide documents sufficient to show Microsoft-published promotional content on YouTube, Twitch, and any other online streaming platforms that include

audio recordings of the musical compositions ODS delivered to Microsoft under the ICA. As you acknowledge in your letter, we have produced responsive documents evidencing content on YouTube, Facebook, and Twitch. In addition, we have also produced promotional content from Halo Waypoint. We have followed up with our client as we promised and identified Soundcloud and the Halo Channel app as additional online streaming platforms to which Microsoft has posted content promoting Halo that includes Halo music. We are working on collecting responsive documents from these sources and will produce accordingly. Finally, we will consult again with our client whether Microsoft has any more responsive documents and hope to have an answer by early next week.

Microsoft's Response to RFP 22. This request asks Microsoft to produce any Microsoft press releases or other marketing materials that mention Marty O'Donnell or Mike Salvatori. Microsoft agreed to and has produced press releases and any Halo Waypoint pages that mention Mr. O'Donnell or Mr. Salvatori. *See, e.g., MSFT\_00000235-353.* As stated in my February 12 letter, Microsoft is waiting for ODS to confirm it is satisfied with our proposed narrowing (to Twitter, Instagram, Facebook, YouTube, and Twitch), as suggested in my email dated September 14, 2020, before undertaking a comprehensive collection and review. If that is not acceptable, please let us know, and we will again consult with our client about whether additional documents exist.

Microsoft's Response to RFPs 2-3, 8, 11, 14-15, 21. As I explained in my February 12 letter, we believe we have fulfilled our obligations to these requests and identified Bates ranges of responsive documents. But please let us know if you contend there are any remaining deficiencies. As for your claim that our production of reports from distributors is incomplete, please identify (a) the time period(s) for which you believe reports are missing, and (b) the specific titles you contend are "Halo-legacy works," so that we can investigate further.

Microsoft's Supplemental Response to Interrogatories 1-3. As you know, we served these on March 8.

#### ***ESI Custodial Collections***

In my February 12 letter, I renewed the subject of complying with the ESI order by proposing search terms. Below are the custodians and parameters Microsoft proposes, with hit results. Please, as the ESI order requires, respond, and please provide similar information for your custodians.

- Relevant timeframe: January 1, 2011, to March 10, 2020
- Custodians
  - Dennis Ries
  - Frank O'Connor
  - Ryan Davison
  - Kiki Wolfkill
  - Joel Yarger

Search Terms	Hits
("Sumthing Else" OR "Sumthing Distribution" OR "Musician Indie Coalition") NEAR(25) ("Halo" OR royalt* OR pay* OR earn* OR licens* OR fee*)	2,203
("O'Donnell" OR "Marty" OR "O'Donnell/Salvatori" OR "ODS") NEAR(25) (royalt* OR pay* OR earn* OR licens* OR fee*)	1,848
(Halo NEAR(5) music) NEAR(25) (royalt* OR pay* OR earn* OR licens* OR fee*)	207
Abel NEAR(2) Korzeniowski	173

(Jim OR James) NEAR(2) Charne	54
Recording NEAR(25) (Halo NEAR(2) Anniversary)	27
"L. Heureaux Martin" OR "Gilbert Thevenet" OR "Florian Seriot" OR "Joshua Camp" OR "Michael Hearst" OR "Martin Cooper" OR "Patrick Azzara" OR "Redeye Distribution" OR "Shock Entertainment"	25

### ***Case Extension***

You raised the possibility of seeking a case extension during the hearing on Microsoft's Rule 12(c) motion. Is this still a request ODS intends to make? If so, we are willing to discuss this, and would like to keep the schedule in mind as we work through these discovery issues.

### ***ODS's Supplemental Interrogatory Responses***

I laid out our concerns with ODS's supplemental interrogatory responses in my February 12 letter. We have not received a response—please let us know if ODS will agree to supplement as it previously agreed to on our meet and confer call on November 11, 2020.

Finally, I again suggest we set a time to talk, which may narrow the issues in dispute for the Court. We are available to meet and confer about the above issues this Friday (1-2pm and 3-5pm), next Monday (12-4pm), and next Tuesday (11am-1pm and 1:30-5pm). Please let us know your availability.

Regards,

Ambika

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**Sent:** Wednesday, March 10, 2021 6:28 AM

**To:** Kumar, Ambika <[AmbikaKumar@dwt.com](mailto:AmbikaKumar@dwt.com)>; Brown, Daniel <[dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)>; [thb@gameattorney.com](mailto:thb@gameattorney.com)

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**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Ambika,

I would be happy to set up a chance to discuss the motion however, as I stated in my earlier email, the whole concept of Meet and Confer is based upon mutual respect. When you asked for discovery dates for my client's principals, I gave them to you as soon as I could get them from my client. In turn, I asked for discovery dates for Brian Jarad, Frank O'Connor, and Bonnie Ross. I have renewed that request and still do not have those dates. Thus, I will be happy to discuss the motion with you once we have those dates from you. They are all employees of your client or client subsidiaries. A few phone calls or emails is all that ought to be necessary. Give me the dates and we can move forward.

Second, that you may have given some scattered reports from Warner is not enough to moot the issue I have brought up regarding distributorship. I should be able to reconstruct Microsoft's royalty history from what you have provided to me. The production thus far is wanting in scope and comprehensiveness. Where are the payments for Halo-legacy works derived from such as the Monks' Chant? Why do I not have every month regarding revenue Microsoft received from distribution of the works? I should be able to paper a conference room table with these reports and see a continuous stream of revenue. With the current production, I cannot. So, the very fact that you characterize the issue as moot is another demonstration that you have no respect for the requests or the process. This is very frustrating. You are too good at this sort of litigation not to have noticed that you have not complied.

So, get me my dates and we can talk.

**Mark Lawrence Lorbiecki**

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**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Mark: How about we set a time to talk through the issues, regardless whether your motion is filed? As I said below, some of the issues you intend to include are moot (we did, for example, provide statements from another distributor). Please let me know your availability in the next couple of days.

Regards,  
Ambika

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**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Ambika,

We have been meeting and conferring for over seven months. The success of meeting and conferring is only achieved in an atmosphere of mutual respect. It appears we have failed to strike that note with your client. For example, on February 10, I again requested a few deposition dates for a key witness. I asked for two more witnesses as well. I know that you and Xiang read the email as you responded to the remainder of the email. But, you never even turned down our request, you simply ignored it. We have no suggested dates though we responded to you right away with dates for Marty and Mike. In my declaration, you will see where I set out where you made promises to produce over seven months ago but we have yet to receive the information.

In Naval Intel, we used to speak of information given to information from suspected sources as chicken feed when by volume the information might suggest content but the value was not present. For example, you have provided accounting from Sumthin Else as your distributor of game music but Sumthin Else doesn't exist anymore. Are we to believe that Microsoft does not receive revenue from any distributors of its game music?

There is an easy way to get us to strike the motion—produce. You speak of the preference of the Court for informal procedures to resolve discovery conflict. I am a fan of resolving these disputes at the lowest appropriate level but appropriate is the key here. Given the volume of what we seek, it is appropriate to use the more formal procedure. We wish to preserve our appeal rights. As is the law of the Wolf case upon which you rely, Microsoft bears a special duty of disclosure. But, instead, you have insisted on nondisclosure. How, for example, can you really avoid disclosure of derivative works. You avoid disclosure by asserting that until an expert is disclosed and opines as to derivation, this term is meaningless to you. Come on. You litigate this stuff. You are an expert. You know what derivation is. We really are at a point where we need to refer this matter to a judge. You leave us no choice. I am willing to rely upon the record. If we can resolve this, I can strike even in this, you do not produce, instead you lecture to me as to the reasons for simply conceding the matter. That we cannot do if we are to zealously represent our client. We have no choice. We have given Microsoft plenty of time and all we have gotten is chicken feed. Start producing; give us deposition dates that are reasonable; answer interrogatories fully, and we are in business. We can then strike the motion in good conscience. Short of that, this is our duty.

I am willing to listen to anything but be aware, I will do so mindful of my duties to my client in this case. For now, the motion stands.

**Mark Lawrence Lorbiecki**

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**From:** Kumar, Ambika <[AmbikaKumar@dwt.com](mailto:AmbikaKumar@dwt.com)>  
**Sent:** Monday, March 8, 2021 9:19 PM  
**To:** Lorbiecki, Mark <[MLorbiecki@williamskastner.com](mailto:MLorbiecki@williamskastner.com)>; Brown, Daniel <[dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)>  
**Cc:** Li, Xiang <[XiangLi@dwt.com](mailto:XiangLi@dwt.com)>; Blair, Stephanie <[SBlair@williamskastner.com](mailto:SBlair@williamskastner.com)>; Guthrie, Heather <[HGuthrie@williamskastner.com](mailto:HGuthrie@williamskastner.com)>; Smith, Lesley <[LesleySmith@dwt.com](mailto:LesleySmith@dwt.com)>  
**Subject:** RE: O'Donnell/Salvatori v. Microsoft - Discovery

Mark,

On January 28, you sent us a letter outlining what you believed to be deficiencies in Microsoft's discovery responses. You also asked for times to discuss those issues on the phone. We responded February 12, providing responses and available times. Our February 12 letter also outlined deficiencies in ODS's discovery responses. We have received no response, so it was a surprise to see your motion filed.

Rather than engage in premature motion practice, we suggest that we set a time to talk this week. We'd like to know what issues you believe are outstanding in light of our February 12 letter, and we would like to tell you our proposal on the derivative works issues (as we indicated we would in our letter). To the extent you intend to raise the same issues as in your January 28 letter, we believe you'll see many of them are moot. For example, with respect to RFP 2, you explained you did not receive copies of royalty statements and instead saw only documents addressed to Sumthing Else Music. In response, we explained that we had in fact produced the statements and pointed you to the specific Bates range. As another example, with respect to RFP 5, which asks for contracts with specific entities and individuals, we told you we had produced everything we found. We offered to redouble our efforts with the client to be sure there is nothing else, and we did that, and have found nothing more. There are other similar examples. Further, we anticipate sending you the supplemental interrogatory responses within the next day.

Finally, as a reminder, Judge Peterson's procedures make clear that she prefers that we use the expedited procedures available under LCR 37(a)(2), or that we contact the court for a call. We think both of those make more sense than your filing a motion to compel.

Please let us know some times to discuss this week, so we can avoid putting unnecessary issues before the Court.

Regards,  
Ambika

**Ambika Kumar | Davis Wright Tremaine LLP**

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**From:** Smith, Lesley <[LesleySmith@dwt.com](mailto:LesleySmith@dwt.com)>

**Sent:** Friday, February 12, 2021 3:04 PM

**To:** 'mlorbiecki@williamskastner.com' <[mlorbiecki@williamskastner.com](mailto:mlorbiecki@williamskastner.com)>; Brown, Daniel <[dbrown@williamskastner.com](mailto:dbrown@williamskastner.com)>

**Cc:** Kumar, Ambika <[AmbikaKumar@dwt.com](mailto:AmbikaKumar@dwt.com)>; Li, Xiang <[XiangLi@dwt.com](mailto:XiangLi@dwt.com)>; Merritt, Lisa <[LisaMerritt@dwt.com](mailto:LisaMerritt@dwt.com)>; 'SBlair@williamskastner.com' <[SBlair@williamskastner.com](mailto:SBlair@williamskastner.com)>; 'HGuthrie@williamskastner.com' <[HGuthrie@williamskastner.com](mailto:HGuthrie@williamskastner.com)>

**Subject:** O'Donnell/Salvatori v. Microsoft - Discovery

Attached is letter from Ambika K. Doran with regard to the above-referenced matter. Thank you, Lesley Smith, Secretary to Ambika K. Doran

**Lesley Smith | Davis Wright Tremaine LLP**

Legal Secretary  
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